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EXAMINER

SCHATZ, CHRISTOPHER T

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,904	Applicant(s) MINGANTI, GIANNI	
	Examiner CHRISTOPHER SCHATZ	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/7/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant reply dated 06/30/2009 to the examiner's restriction requirement is acknowledged. The examiner acknowledges applicant's Transmittal of New Application Letter dated 06/07/2009 letter stating that claims 1-10 are substituted for claims 1-24. Claims 1-10 will thus be examined.

As to the applicant's traversal of the species restriction, the technical features shared by the restricted claims do not make a contribution over the prior art as discussed in sections 5 and 6 below. Thus, the shared technical features do not qualify as special technical features.

This restriction is considered proper and thus FINAL.

Claim 4 is withdrawn from consideration as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "in that said rods are inserted" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Ashcroft (US 3959065)

Ashcroft discloses a labeling plant capable of labeling a container, said plant comprising a device (figure 1) capable of supporting and transporting a container suspended in an erect position acting above a container, means capable of mounting a heat shrinkable annular band onto a container acting from below (means 31 can mount an annular band), means (39a, 39b) being provided to cause said label to adhere to said container by heat-shrinkage, wherein said means capable of mounting a heat-shrinkable annular band onto said container comprises at least one movable support

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plate (turret 10a) for the label disposed vertically with which the means for causing the heat-shrinkable annular band to adhere by heat-shrinkage are associated. The applicant is referred to figure 1, which shows that the means to cause a label to adhere to a container (sleeve tacking apparatus) is associated with the movable plate 10a and rods 31 (column 3, lines 38-55) because the adhering means and the mounting means are supported by the turret frame 10c (column 4, lines 41-47). This reads on the term "associated". Plate 30 also reads on the term "movable support plate".

As to claim 2, the adhering means comprises a system for delivering hot fluid (column 5, lines 23-46). As to claim 6, the movable support plate 30 is associated with a unit 29 for maintaining a band vertical

6. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Amberg (US 3763496)

Amberg discloses a labeling plant capable of labeling a container, said plant comprising a device capable of supporting and transporting a container suspended in an erect position acting above a container, means capable of mounting a heat shrinkable annular band onto a container acting from below (means 71-73; figure 9, discussion of figure 9), means 77 being provided to cause said label to adhere to said container by heat-shrinkage, wherein said means capable of mounting a heat-shrinkable annular band onto said container comprises at least one movable support plate (turret) for the label disposed vertically (figures 10, 11, 14-16); said plate associated with the means for causing the heat-shrinkable band to adhere by heat

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shrinkage. The means 77 is "associated" with the plate because both the plate and the means are part of the device.

As to claim 2, the means comprises a system for delivering hot fluid (hot air). As to claim 6, the moveable support plate is associated with a unit (figures 11, 14-16)

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ashcroft as applied to claims 1 and 2 above, and further in view of Bolen (US 3523052).

It is not clear if Ashcroft discloses a plant wherein said adhering means comprises steam. At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify the plant of Ashcroft such that said heat-shrinking means comprises steam as taught by Bolen (column 4, lines 57-61) as such is a well known and conventional means to adhere a label via heat shrinkage.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Amberg et al. (US 3767496) in view of Marchesini (US 4991377).

Amberg is silent as to a method wherein the adhering means comprises a cylinder and a plurality of hot fluid dispensing nozzles supported by the movable support plate is associated with the movable plate. Marchesini discloses a device capable of

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adhering a heat shrinkable label to a container, wherein said means 20 (figure 3) for adhering a shrinkable label to a container comprises a cylinder 20 (figure 3) with a plurality of nozzles 6a. At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify the apparatus of Amberg such that said adhering means comprises a cylinder and a plurality of fluid dispensing nozzles as taught by Marchesini as such a modification would enable the apparatus to uniformly heat a label around its entire circumference thus enabling said apparatus to produce a better connection between a label and a bottle in a more efficient manner (column 5, lines 11-30). Additionally, Marchesini discloses that the label and bottle are raised from below such that said label and bottle are moved within said cylinder (figure 3). One of ordinary skill in the art would thus have readily recognized to place the adhering means on the movable plate to enable the modified apparatus of Amberg to heat shrink the label immediately after said label is raised onto said bottle.

10. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ashcroft or Amberg as applied to claims 1 and 6 above, and further in view of Konstantin (US 4514966) and Lerner et al. (US 5483783).

It is not clear if Ashcroft or Amberg disclose a device wherein the unit for maintaining a band vertical comprises four vertical rods branching from a second plate connected to the moveable support via at least one cylinder piston unit. Konstantin discloses a plant and device for labeling a container, said plant capable of placing a preformed band around a bottle (figure 1), comprising a unit for maintaining a band

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vertical, wherein said unit comprises four vertical rods 1, 1' 2, 2'. At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify the apparatus of Ashcroft or Amberg such that the unit for maintaining a band vertical comprises four vertical rods as taught by Konstantin above as doing such enables the apparatus to place bands around bottles of different circumferences. Lerner discloses a plant for placing a label on a bottle comprising a movable plate (turret) and further discloses and unit for maintaining a label vertical wherein said unit comprises rods branching from a fixed second plate 152 (figures 12-14, 16 and discussion of said figures) said fixed second plate connected to said fixed plate via a cylinder piston (column 8, lines 42-61). At the time the invention was made it would have been obvious to one of ordinary skill in the art to further modify Ashcroft or Amberg as modified by Konstantin such that the rods are connected to a fixed second plate as taught by Lerner above as doing such enables the apparatus to supply air between a label and bottle via said rods thus reducing friction during the placing of said label on said bottle (column 8, lines 42-61).

As to claims 8, Konstantin discloses rods on a perimeter of an imaginary circumference (figures). The rods are capable of maintaining a label widened. As to claims 9, Lerner discloses holes 144 (figure 12) in the movable plate. As to claim 10, the combination of references renders the limitations obvious for the reasons presented in the discussion of claims 7 and 9 above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER SCHATZ whose telephone number is 571-272-6038. The examiner can normally be reached on Monday through Friday 9 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER SCHATZ/
Examiner, Art Unit 1791

/Richard Crispino/
Supervisory Patent Examiner, Art Unit 1791